

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
Board Chair

Kristin F. Rozansky
Board Director

State Personnel Board
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Meeting Minutes March 18, 2008

The State Personnel Board met in public session on Tuesday, March 18, 2008, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at 9:03 a.m. Board Members Roberto Corrada, Rich Djokic, Dana Shea-Reid, Robert Thompson, and John Zakhem were present in person.

Kristin F. Rozansky, Board Director; Assistant Attorney General Roxane Baca, Board Counsel; and Jane Sprague, General Professional III, were also present in person.

I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

Mr. Gonzales did not report to the Board.

II. REQUESTS FOR RESIDENCY WAIVERS

Director Rozansky reported that there were no new residency waiver requests pending this month. With respect to the Report on Residency Waivers for the past three fiscal years, which she provided to the Board in its packet, she stated that she has received follow-up information from all residency waiver requesters with the exception of the University of Colorado at Boulder's residency waiver request for a Telecom Electronic Specialist, which expired July 12, 2007. She also indicated that she would be presenting a report to the Board on an annual basis, which will provide that the results of the granting of waivers. Mr. Zakhem stated that he liked the report with its easy-to-see results; having the results tabulated and quantified makes it easy for him, and other Board members, to field questions from stakeholders. The Director also stated that she would provide this information in the next monthly report on behalf of the State Personnel Board to the Governor in the Board's designated section of the monthly DPA report.

III. PENDING MATTERS

There were no Pending Matters before the Board this month.

IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or Other Final Orders of the Administrative Law Judges on Appeal to the Board this month.

V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

- A. John Johnson v. Department of Human Services, State Personnel Board case number 2007G054.

Mr. Corrada moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

The Board went into Executive Session for a brief period before discussing the following matter.

- B. Nicole Carter-Maddox v. Department of Health Care Policy & Financing, State Personnel Board case number 2008G044.

Following consideration of the fourth prong of a *prima facie* case of discrimination, the application of *Colorado Civil Rights Commission v. Big O Tires*, 940 P.2d 397 (Colo. 1997), and the issue of whether the same actor inference was rebutted, Mr. Corrada moved to reject and reverse the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Mr. Thompson seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic. Mr. Zakhem stated for the record that, during Executive Session, the Board had discussed the *Big O Tires* precedent as applied to all cases of discrimination based on race and that he felt it was important to state this in the Board's public session.

VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. David Romero v. Regents of the University of Colorado, University of Colorado at Boulder, Housing Facilities Services, State Personnel Board case number 2007B015(C) (February 19, 2008).
- B. Ezekiel A. Martinez v. Department of Human Services, Division of Facilities Management, State Personnel Board case number 2007B075 (February 25, 2008).
- C. Anthony Benson v. Department of Corrections, Centennial Correctional Facility, State Personnel Board case number 2008B032 (February 27, 2008).
- D. Francisco Bustamante v. Regents of the University of Colorado, University of Colorado at Boulder, Division of Facilities Management, State Personnel Board case number 2008B029 (February 27, 2008).
- E. John Malloy v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Services Center, State Personnel Board case number 2007B102 (March 3, 2008).

VII. REVIEW OF THE MINUTES FROM THE FEBRUARY 19, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the February 19, 2008 meeting as submitted. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic. Mr. Corrada abstained because he was not present at the February 19, 2008 meeting.

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 19, 2008 PUBLIC MEETING:

- A. Leo Bellio v. Department of Revenue and State Personnel Board, Court of Appeals No. 06CA1377, State Personnel Board case number 2005B052(C).

In response to the January 4, 2008 Order Reversed and Case Remanded with Directions of the Court of Appeals and Mandate, the Board reversed the Initial Decision of the Administrative Law Judge, with regard to the November 2004 disciplinary action; rescinded the November 2004 disciplinary action in its entirety; and remanded the matter to the Administrative Law Judge for a determination of attorney fees awarded to Complainant, in compliance with the Court of Appeals' order. The Board also ordered that Board staff set a briefing schedule on the issue of the

award of attorney fees to Complainant, to be determined by the Administrative Law Judge.

- B. Sean McGuire v. Department of Revenue and State Personnel Board, Court of Appeals No. 06CA1532, State Personnel Board case number 2004G80(C).

In response to the January 25, 2008 Mandate from the Court of Appeals, Order Reversed and Case Remanded with Directions, Opinion Modified and Petition for Rehearing Denied and in compliance with the Court of Appeals' order, the Board remanded this matter to the Administrative Law Judge for an evidentiary hearing regarding Complainant's constitutional claim and whether Complainant was discriminated against on the basis of age or disability when he was not hired for the Criminal Investigator II position.

- C. Robert Gonser v. Department of Transportation, State Personnel Board case number 2007B098.

The Board voted to strike Complainant's Amended Briefing for Board Appeal for lack of timeliness, to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, and to adopt the Initial Decision.

- D. Samuel Forte, Jr. v. Department of Human Services, Division of Youth Corrections, Spring Creek Service Center, State Personnel Board case number 2008G016.

The Board voted to deny the Motion to Recuse Board Member Robert Thompson, to grant the Motion to Strike the transcript of an October 23, 2007 unemployment insurance hearing, and to adopt the Dismissal Order of the Administrative Law Judge.

- E. John Redding v. Department of Natural Resources, Division of Water Resources, State Personnel Board case number 2008S002.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- F. Kathleen Schultz v. Colorado State University, College of Agriculture Sciences, State Personnel Board case number 2008G029.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- G. Mathew Christensen v. Department of Public Health and Environment, State Personnel Board case number 2008G034.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES (DHR), DPA

Mr. Kaye began his report by introducing Tom Montoya, who is the newly selected Deputy Director of DHR with a start date of April 7, 2008. Mr. Montoya was chosen as Deputy Director of DHR for his executive level leadership and management skills, as well as his significant HR experience. As an update on a technical matter, Mr. Kaye reported that DHR has consolidated the Teachers occupational group with the Professional Services occupational group. As a result, Mr. Kaye stated that Board Rule 7-18(C) is in need of some minor revision to clarify that Teachers are no longer in a separate occupational group.

On a subject which Mr. Gonzales asked Mr. Kaye to bring to the Board's attention, Mr. Kaye stated that an employee who recently had a Board Rule 6-10 meeting was denied a transcript of that meeting after asking the appointing authority for a copy of it. The employee had contacted Mr. Gonzales regarding this issue. It is Mr. Kaye's belief that since employees are permitted to make their own recording of a 6-10 meeting, they should be given a transcript of the "official" recording. Mr. Corrada expressed a concern whether evidence produced by the state would set a precedent and that the Board may need to develop a rule to deal with this situation. Mr. Kaye responded that there may be privacy interests, but it makes sense to have a single recording and perhaps allowing an appointing authority to redact certain information from the transcript of that recording.

Board Counsel Baca advised that, per the Open Records Act and Administrative Procedure 1-23 (Official Personnel File), an employee should be able to get a transcript of one's own 6-10 meeting. Mr. Corrada said that privacy or personal interests may oppose state interests and that the current Administrative Procedure 1-23 may not be sufficient. There were also concerns from Board members about how the information in a 6-10 meeting would be used, if release of such information was possibly harmful, and the fact that disciplinary and correction actions should be considered part of one's personnel file. It was the consensus of the Board that this issue should be scheduled for rulemaking and that input from all stakeholders should be elicited.

Finally, Mr. Kaye stated that with regard to the document entitled, "Employees" (included in the Board packet), the document is an example of DPA "walking the talk," that is, putting employees first.

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Mandate - Order Affirmed, Lanphier v. Department of Public Health and Environment, State Personnel Board case number 2003B017, Court of Appeals No. 05CA1960
- Mandate - Order Affirmed, Muragara v. Department of Revenue, State Personnel Board case number 2006B001, Court of Appeals No. 06CA1015

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that Board staff has sent out postcards for the ALJ survey, which the Integrated Document Solutions (IDS) group from DPA is compiling for an on-line survey of ALJs, including ratings on demeanor, case management, and quality of decisions. Ms. Rozansky also reported that Ms. Shea-Reid's confirmation hearing had gone well and that the legislative committee recommended that her appointment be approved. Finally, the Director reported that the Memorandum of Understanding (MOU) regarding partnership agreements was going to be signed before any negotiations start and that so far, only one election has been held, the State Patrol election. Mr. Corrada requested a copy of the signed MOU as soon as it becomes available.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Scott Horak asked the Board: How do we know M&Ms are safe to eat? Mr. Djokic stated that the Board has already answered a similar question about M&Ms last month and that this matter was not within the Board's expertise.

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

Director Rozansky reported that she is tracking bills in the legislature and provided a chart to the Board members listing the bill number, sponsor, committee, summary, and status of ten pending bills. She remarked that SB4, establishing a working group to make recommendations on statutory and Board rule changes regarding the hiring of developmentally disabled persons, was sent to Senate appropriations; SB75, the Rule Review Bill, which approves the rules passed by the Board in the past year, has been sent to the Governor, having passed the House and Senate; for SB200, which prohibits discrimination based

on sexual orientation in employment in the state personnel system, there is already a Board rule currently on the books and this bill has been assigned to committee; and HB1189, which prohibits strikes by state employees, has been laid over.

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the February 19, 2008 Executive Session
- C. Other Business

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APPROVED THIS 15th DAY OF APRIL, 2008.

Rich Djokic, Board Chair

Roberto Corrada, Member

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member